

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:07-CV-00739-JAB-JEP**

DAVID F. EVANS, et al.,

Plaintiffs,

v.

CITY OF DURHAM, N.C., et al.,

Defendants.

**DEFENDANT MARK GOTTLIEB
AND BENJAMIN HIMAN'S
MOTION FOR JUDGMENT
ON THE PLEADINGS**

Defendants Mark Gottlieb and Benjamin Himan (collectively "Officers Gottlieb and Himan"), by and through their undersigned counsel, hereby move this Court for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure dismissing the Second Amended Complaint in its entirety against them. Following the recent decision by the Fourth Circuit Court of Appeals in this matter, *Evans v. Chalmers*, 703 F.3d 636 (4th Cir. 2012), the sole remaining cause of action pending against Officers Gottlieb and Himan is for malicious prosecution under North Carolina state law. Under the recently decided case of *N.C. Farm Bureau Mut. Ins. Co. v. Cully's Motorcross Park, Inc.*, 366 N.C. 505, 742 S.E.2d 781 (2013), it is clear from allegations in the Second Amended Complaint that Plaintiffs will be unable satisfy the essential causation element of the tort of malicious prosecution. That claim, and with it the lawsuit against Officers Gottlieb and Himan, therefore must be dismissed.

The basis for this motion for judgment on the pleadings is set forth more thoroughly in the Memorandum of Law filed contemporaneously with this Motion.

This the 28th day of February, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record.

I further certify that I have this day served a copy of the foregoing to the following non-CM/ECF participant by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following person at the following address which is the last addresses known to me:

Linwood E. Wilson
6910 Innesbrook Way
Bahama, NC 27503-9700

This the 28th day of February, 2014.

s/ Eric P. Stevens
Eric P. Stevens
